

2 Moore NS 22, 15 ER p811

[2-Moore NS-22] ON APPEAL FROM THE SUPREME COURT AT CALCUTTA.

Advocate-General of Bengal v Dossee [1863] 2 Moore NS 22, 15 ER 811

Report Date: 1863

THE ADVOCATE-GENERAL of BENGAL on behalf of Her Majesty, - Appellant; RANEE SURNOMOYE DOSSEE, - Respondent * [June 29, 30, 1863].

The introduction and establishment of the English Criminal law in India, and its application to Natives as well as Europeans considered, in reference to the prerogative of the Crown to forfeiture of personal property of persons committing suicide in Calcutta.

The English law of *felo de se*, and forfeiture of goods and chattels, does not extend to a native Hindoo, though a British subject, committing suicide at Calcutta.

Where Englishmen establish themselves in an uninhabited, or barbarous country, they carry with them not only the laws, but the Sovereignty of their own State; and those who live amongst them and become members of their community, become partakers of and subject to the same laws [2 Moo. PC (N.S.) 59].

This rule held not to apply to the early settlement of the English in India, as the permission to the settlers to use their own laws within the Factories, did not extend those laws to Natives associated with them within the same limits.

The question in this case was, whether the interest of a Hindoo, a British subject, in a fund which was standing to the credit of an account in a cause in the Supreme Court at Calcutta, had been forfeited to the Crown, by reason of his having committed suicide in Calcutta, and found *felo de se* by a Coroner's jury there.

The question was raised by a petition presented [2-Moore NS-23] by the Advocate-General of Bengal, on behalf of Her Majesty, for a transfer of this fund to the Crown, on the ground of such alleged forfeiture.

The circumstances which gave rise to the claim were as follow:-

Rajah Hurrynauth Roy, a Hindoo, possessing considerable real and personal property in the Province of Bengal, made his Will on the 26th of November, 1832, and soon afterwards died, leaving his mother Raneeshoosharmohee Dossee; his wife, Raneeshurrooondery Dossee; an only son, Rajah Kistonauth Roy, also a daughter, Gobindsoondery Dossee, him surviving.

On the 28th of September, 1839, Raneeshurrooondery and Raneeshoosharmoyee filed a bill in the Supreme Court at Calcutta, against Rajah Kistonauth Roy and James Charles Colebrook Sutherland (who with Nathaniel Alexander was named Executor), setting forth the Will, and praying that the trusts thereof might be carried into effect under the decree of that Court. A cross bill was subsequently filed by Rajah Kistonauth Roy against Raneeshurrooondery Raneeshoosharmoyee Dossee, James Charles Colebrook Sutherland and Nathaniel Alexander.

On the 29th of July, 1843, the Supreme Court directed that out of the money then in Court, to the credit of these causes, a sum of Rs. 6,86,700, should be invested and transferred to a separate account; and that out of the interest thereof Rs. 800 per month should be paid to Raneeshoosharmoyee Dossee, and Rs. 1400, per month to Raneeshurrooondery Dossee during the term of their respective lives, which was done accordingly. Subject to these charges the fund so set apart he longed to and was part of the estate [2-Moore NS-24] of Rajah Kistonauth Roy as the only son and general Legatee and devisee of the Testator.

On the 31st of October, 1844, Rajah Kistonauth Roy, whose family estates were situated at Berkbampore in Bengal, out of the jurisdiction of the Supreme Court, but who had a residence at Calcutta, committed suicide at Calcutta. He was a Hindoo by birth and religion, and died childless, leaving the Respondent, his widow, his heiress and representative according to Hindoo law, him surviving.

An inquest was held by the Coroner for the town of Calcutta, and an inquisition was returned by the jury, finding that the deceased died *felo de se*; and that he had at the time of his death, goods and chattels within the town of Calcutta to the value,

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including the fund in the Supreme Court, of Rs. 9,87,063. 3a. 5p. and without the town of Calcutta, to the value of Rs. 2,89,500.

On the day on which he committed suicide, the deceased signed a paper-writing purporting to be his Will, whereby, after leaving various legacies, he directed that in the event, which happened, of no son being born to him the greater part of his Zemindary and landed property should go to the foundation of a school, or college, which he solicited the British Government of India, to establish from the proceeds of it.

Shortly after Rajah Kistonauth Roy's death litigation arose concerning this Will. The Respondent alleged that the Will had been executed by Rajah Kistonauth Roy while of unsound mind; and its invalidity was declared in a suit in the Supreme Court, to which the British Government in India was a party. The Government thereupon gave up to the Respondent[2-Moore NS-25] all the real and personal property of Rajah Kistonauth Roy situate out of Calcutta, which was at that time in its possession, or under its control, and permitted the Respondent to receive from the Registrar of the Supreme Court, with whom the same had been deposited, pending the result of the suit, all the personal property of Rajah Kistonauth Roy situate in Calcutta, with the exception of the money standing to the credit of the causes, to the possession of which the Rajah, or his representative. was at that time entitled.

The Respondent was advised by Counsel to take proceedings to set aside the verdict of *felo de se*, as being against the weight of evidence, as well as on the ground of misdirection by the Coroner in his charge to the jury, but no proceedings were taken for that purpose, in consequence of the Government of India, or their legal advisers, stating to her legal advisers that they would not prefer any claim under such verdict of *felo de se*.

In the absence of any claim to forfeiture by the Government of India, and in accordance with such waiver, the whole of the real estate, and such of the personal estate of the deceased as was not in Court, was absolutely given up, to the present Respondent.

Ranee Shoosharmohee Dossee died on the 14th of February, 1848, and shortly after, the Respondent, as the representative of Rajah Kistonauth Roy, made claim to so much of the fund in Court as was not required to, meet the sum of Rs. 1400 per month charged thereon in favour of Rane Hursoondery Dossee; but the Court refused to make any [2-Moore NS-26] order on such claim, and directed that the same should stand over pending an application to Her Majesty, on the ground that there had been neither a grant by the Crown, nor any formal intimation on which the Court could act that the Crown had intended to surrender, or to abstain from urging, its right in respect to Rajah Kistonauth Roy's estate.

The Respondent accordingly caused notice of her claim to be served on Her Majesty's Attorney-General, and on the Solicitor of Her Majesty's Treasury in London, and also in 1849, to avoid litigation, presented a memorial to Her Majesty praying that Her Majesty would be graciously pleased either to abandon her claim, or to grant the same to the Respondent as Rajah Kistonauth Roy's widow.

In addition to these notices and memorial, the proceedings on the Coroner's inquest and the finding thereupon were, immediately after they had taken place, communicated to the Solicitors of Her Majesty's Treasury, in London, for instructions, in case Her Majesty should thereupon be advised to prefer any claim to the property of Rajah Kistonauth Roy; but no claim was made by the Crown. And, in August, 1860, a letter was sent by the Secretary of State for India to the governor-general in Council, stating that the Commissioners of Her Majesty's Treasury waived all claim to the property of the late Rajah Kistonauth Roy so far as the interests of the Crown were concerned, and left it to the disposal of the Indian Government.

On the 16th of January, 1861, the Advocate-General presented a petition to the Supreme Court, claiming that the fund set apart by the Court, subject [2-Moore NS-27] to the aforesaid charges, belonged to and was part of the estate of Rajah Kistonauth Roy, as only son and general Legatee and devisee of the Testator, Rajah Hurrynauth Roy; and that on the felonious suicide of Rajah Kistonauth Roy, the right, title, and interest in and to the fund (subject as aforesaid) became forfeited to and was vested in Her Majesty, Her heirs and successors; and the petition prayed that, after retaining so much of the fund as might be required to meet the still subsisting charge of

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Rs. 1400, per month, and after paying the costs of that application, the remainder of the fund might be transferred to the Secretary of State for India in Council, for and on behalf of Her Majesty, for the purposes of the Government of India.

This petition was heard by the Supreme Court on the 19th of April, 1861, when judgment was delivered by the Chief Justice, Sir Barnes Peacock. After setting forth the facts above detailed, and stating the origin of the claim and the waiver by Her Majesty's Government in England of any claim on account of the alleged forfeiture of the estate of the late Rajah Kistonauth Roy, the learned Judge proceeded:- "Rajah Kistonauth Roy left a widow, Rane Surnomoye Dossee, his mother, Rane Hursoondery Dossee, and two nephews, Opende Chunder Nundy and Juggender Chunder Nundy, the sons of his sister, Gobindsoondery. These parties have appeared by their respective Counsel. Rane Surnomoye Dossee, the widow, does not oppose the claim; but it has been contended on behalf of the mother and nephews, that the Crown is not entitled to any portion of the fund, and that according to the law in force in Calcutta it was not forfeited. In addition to that, which was the main argument. it was urged on behalf of the mother of [2-Moore NS-28] Rajah Kistonauth Roy, that he was never entitled

to any part of the fund in Court, and that consequently, even admitting, for the sake of argument, that the law of forfeiture prevailed in Calcutta, no part of the fund passed to the Crown. The case of *Mussumat Golab Koonwur v The Collector of Benares* (4 Moore's Ind. App. Cases, p. 246) was cited to show that the forfeiture, even if it existed, could not affect the rights of the mother and widow of Rajah Hurrynauth Roy to maintenance. We entirely concur in that view; but we are of opinion that the mother and widow, although entitled to maintenance, were not entitled to the money brought into Court to secure it. It is sufficient for us to state shortly, that in our judgment, Rajah Kistonauth Roy, at the time of his death, was entitled to the fund, subject to its remaining in Court as a security for the maintenance of the mother and widow of Rajah Hurrynauth Roy until their respective deaths. The interest was one which, according to the law of forfeiture, if in force in Calcutta to its full extent, would pass to the Crown upon a valid finding of *felo, de se*. A preliminary objection was taken, namely, that this claim could not be made by petition without reviving the suits in which the money was ordered to be brought into Court, those suits having abated by the death of Rajah Kistonauth Roy. But we are clearly of opinion that that objection cannot prevail. The case referred to by Mr. Justice Jackson, *In re Jervoise* (12 Beav. 209), is a decisive authority, if any authority were necessary, to that effect. The main questions therefore, to be decided in this case is, whether or not the goods and chattels of a Hindoo are forfeited to the Crown upon its appearing by a Coroner's inquisition that he [2-Moore NS-29] committed *felo de se* within the local limits of the jurisdiction of the Supreme Court at Calcutta. That must depend upon whether the English law by which the goods and chattels of a *felo de se* are forfeited to the Crown, has ever been introduced into Calcutta, and if so, whether it applies to Hindoos and Mahomedans, as well as to European British subjects. It is a well recognized doctrine, and one which has been acted upon by this Court for more than half a century, that, speaking generally, the first introduction of English law into Calcutta, was effected by the Charter of George the First, by which, in the year 1726, the Mayor's Court was established. It is unnecessary to cite authorities in support of that position; indeed, it was admitted by the learned Advocate-General in his argument in this case. The question is, whether the law by which the goods and chattels of a *felo de se* are forfeited to the Crown, was introduced by that Charter, or at any other time. It is unnecessary to go back to a period antecedent to the Charter, for even if it could be held that British subjects carried with them to India any part of the law of England-and probably they did, from necessity, carry with them some of their own laws, such as those relating to marriage it is clear that they did not carry with them any law which could entitle the Crown, prior to the acquisition of sovereignty, to the goods and chattels of a native *felo de se*, if such a term could be used prior to the introduction of the English law of Felony. We will, therefore, consider, first, whether such a law was introduced by the Charter; secondly, whether it was introduced subsequently by any law expressly extending to Calcutta, and thirdly, whether it was introduced [2-Moore NS-30] when Calcutta became part of the dominions of the Crown, as a necessary incident of sovereignty. It is clear, from the

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judgment of Lord Brougham in the case of *The Mayor of Lyons v The East India Company* (1 Moore's PC Cases, p. 274), that in the year 1726, and for many years Afterwards, Calcutta was merely a Factory, established for the purposes of trade, by British subjects in a Foreign territory. It was not at that time part of the dominions of the Crown, although the Crown exercised jurisdiction over it as a Factory, in the same manner as the Government of England and other European Governments have done in many similar cases. It is laid down by Lord Brougham, in the most explicit manner, that for a long period of time after the first acquisition, no English authority existed there, which could affect the land, or bind any but English subjects. The situation of Calcutta, at that time, is so clearly pointed out in the judgment, that we cannot do better than read the following extract from it: 'The District on which Calcutta is built, was obtained by purchase from the Nabob of Bengal, the Emperor of Hindostan's Lieutenant, at the very end of the seventeenth century. The Company had been struggling for nearly a hundred years to obtain a footing in Bengal, and until 1696, they never had more than a Factory here and there as the French, Danes, and Dutch also had. Till 1678, their whole object was to obtain the power of trading, and it was only then that they secured it by a Firman from the Emperor. From that year till 1696, they in vain applied to the native Government for leave to fortify their Factory on the Hooghly, and it was only then that they made a fortification, acting upon a kind of [2-Moore NS-31] half consent, given in an equivocal answer of the Nabob. Encouraged by the protection which they were thus enabled to afford the natives, many of them built houses, as well as the English subjects; and when the Nabob, on this account, was about to send a Kazi, or Judge, to administer justice to those natives, the Company's servants bribed him to abstain from this proceeding. Some years afterwards the Company obtained a grant of more land and villages from the Emperor, with renewed permission to fortify their Factories. During all this period tribute was paid to the Emperor, or his officer, the Nabob; first, for leave to trade, afterwards as Zemindars, under the Emperor; and in 1757, the year memorable for the battle of Plassy, the treaty with Jaffier Ally, indemnifying them for their losses, ceding the French

possessions, and securing their rights, and binding them to pay their revenues like other Zemindars. Eight years later they likewise received from the native Government a grant of the Dewanny or receivership of Bengal, Behar and Orissa; and of their subsequent progress in power it is unnecessary to speak; enough has been said to show, that the settlement of the Company in Bengal was effected by leave of a regularly established Government in possession of the country, invested with the rights of sovereignty, and exercising its powers; that by permission of that Government, Calcutta was founded and the Factory fortified, in a District purchased from the owners of the soil by permission of that Government, and held under it by the Company as subject's owing obedience, as tenants rendering rent, and even as officers exercising, by delegation, a part of its administrative authority. At what precise time, and [2-Moore NS-32] by what steps, they exchanged the character of subjects for that of sovereign, or rather, acquired by themselves, or with the help of the Crown, and for the Crown, the right of sovereignty, cannot be ascertained. The sovereignty has long since been vested in the Crown, and though it was at first recognized in terms by the Legislature in 1813; the Statute, 53rd Geo. III. c. 155, s. 95, is declaratory, and refers to the sovereignty as 'undoubted,' and as residing in the Crown; but it is equally certain that for a long period of time after the first acquisition, no such rights were claimed, nor any acts of sovereignty exercised; and that during all that time no English authority existed there, which could affect the land or bind any but English subjects. The Company and its servants were then in the situation of the Smyrna or the Lisbon Factories at the present time. Such being the case, we will now examine the Charter of George I. in order to ascertain whether the law of forfeiture in the case of a *felo de se* was introduced by it. In the first place it recites that the United Company of Merchants trading in the East Indies have, by a strict and equal distribution of justice within the towns, Factories, Forts, and places belonging to the said Company, in the East Indies, and other parts beyond the Cape of Good Hope to the Straits of Magellan, very much encouraged, not only Our own subjects, but likewise the subjects of other Princes, and the Natives of the adjacent countries, to resort to, and settle in the said towns, forts, factories, and places for the better and more convenient

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carrying on of trade, by which means, some of the said towns, factories, and places, are become very populous, and specially the town or place, [2-Moore NS-33] anciently called Chinapatnam, now called Madraspatnam, and Fort St. George, on the coast of Coromandel, and also the towns, factories, or places called Bombay, on the Island of Bombay, and Fort William, in Bengal, in the said East Indies and parts aforesaid; * * * and that there is a great want, in all the said places, of a proper and competent power and authority for the more speedy and effectual administering of justice in civil causes, and for the trying and punishing of capital and other criminal offences and misdemeanors, committed within the places and districts aforesaid, and in other the said Company's settlements. Section 1, incorporates the Mayor and Aldermen of Madras. By section 7, a Sheriff is appointed. By section 9, a Mayor's Court is appointed. Section 14, constitutes the Governor, and five senior Members of the Council, Justices of the Peace, and a Court of Oyer and Terminer. Sections 16 to 22 incorporate the Mayor and Aldermen of Bombay, and give them similar powers. By section 24 to 30, the same provisions are extended to the Presidency of Fort William in Bengal. A Charter or Statute, by which Courts of justice are constituted, does not necessarily determine the law which they are to administer, but in construing the Charter of George I. there can be no doubt that it was intended that the English law should be administered as nearly as the circumstances of the place, and of the inhabitants, should admit. The words, give judgment according to justice and right, in suits and pleas between party and party, could have no other reasonable meaning than justice and right, according to the laws of England, so far as they regulated private rights between party and party. Such [2-Moore NS-34] general words could not possibly refer to any law, such as the Mortmain Act, or the Alien laws, which had reference merely to some views of public policy, supposed to be applicable to England, even though private rights might be affected by them. Still less could they be supposed to refer to the rights or revenues of the Crown, depending upon prerogative, and which were wholly inapplicable to a territory to which the sovereignty did not extend. Then, was the law of forfeiture of the goods and chattels of a *felo de se* introduced by those clauses of the Charter by which the Courts of Oyer and Terminer were established? The only words under which it could be included are those which authorize the Justices of the Peace or Commissioners of Oyer to proceed to the arraignment, trial, conviction, and punishment of persons accused of crimes and offences. It is unnecessary to decide, whether these words impliedly introduced the law of forfeiture in the case of attainder or conviction of Felony. (forfeiture being no part of the sentence or punishment), or whether they introduced the whole law of forfeiture for crimes, including the prerogative right of a year and a day, and waste in lands of inheritance of a person attainted, or only some and what part of the law; whether the law, if introduced, extended to Natives, or to British subjects only, and if to Natives, whether their lands were to be considered as lands or inheritance or merely as chattels; or, finally, whether, if that branch of the prerogative which related to forfeiture was introduced, the somewhat

similar right of the Crown to deodands was in like manner extended in the case of Natives. These and other nice points of law will have to be determined should the question [2-Moore NS-35] ever arise. At present we express no opinion concerning them, nor as to the rights of the Crown in cases of crimes made felonies by Statutes passed since the sovereignty was acquired in India. At present we have merely to consider the question, so far as it relates to the goods and chattels of a Native who wilfully and intentionally destroys himself, and who cannot in strictness be called a *felo de se*; and we now proceed to deal with that question, and with that question alone. It has been decided that the goods and chattels of felons of themselves are a different liberty, from the goods and chattels of felons, and that by the grant of one the other, does not pass, *The King v Sutton* (1 Saunders, 274 a). They are different in their nature, the former depending upon an inquisition of office taken, as it necessarily must be, after the death of the *felo de se* the other resulting from an attainder on conviction of the felon after arraignment and trial in his presence. Now the charter of George the First clearly contemplated a trial. The recital is, that there is a great want of proper and competent power and authority for the more speedy and effectual administering of justice in civil causes, and for the trying and punishing of capital and other criminal offences and misdemeanors. It did not, and could not,

2 Moore NS 36, 15 ER p816

recite that there was any want of the means of enforcing the Crown had prerogative right to the goods and chattels of felons of themselves, for the Crown had no prerogative rights in Calcutta. The Charter clearly contemplates the trial and punishment of persons accused of crimes, and not the creation of a right for the Crown, or the extension of any of its ordinary sources of revenue to a place in which the rights of sovereignty did not [2-Moore NS-36] exist. Further, the grant of the right to hold Courts of Oyer and Terminer was made to the East India Company, and upon their petition and for their benefit, and not at the instance of the Crown. No Coroner was appointed, no provision was made for an inquest of office, and no Officer appointed to secure forfeiture. It was contended in argument-, that as the Justices of the Peace, and Commissioners of Oyer and Terminer, had jurisdiction to try persons accused of murder, so they might hold an inquest of office and inquire by what means a man came to his death, in the same manner as Justices could in England when a body was thrown into the sea or could not be found, and the 3 Inst. p. 54, was cited as an authority. The same rule is laid down in *I Hale*, PC 413, for it is said to be within the extent of their commission. But the commission of Oyer and Terminer in England is to inquire of all murder, felonies, manslaughters, killings, etc. by whomsoever and by whom, to whom, when, how, and in what manner, and also, to hear and determine, etc. Whereas the power given by the Charter is to proceed by indictment or by such other ways, and in the same or the like manner as is used in England, as near as the condition and circumstances of the place will admit of; also to proceed to the arraignment, trial, conviction and punishment of persons accused of any crimes or offences. in the same manner and as near as the condition and circumstances of the place will admit of, as Justices of the Peace or Commissioners of Oyer and Terminer in England by virtue of their commissions. We doubt whether these words or the words immediately following-shall and may respectively do all other acts that Justices of the [2-Moore NS-37] Peace and Commissioners of Oyer and Terminer usually and legally do-authorized the Governor and Council to hold inquests of office. But whether they did so or not, we feel confident, that they were never intended to give to a finding of *felo de se* upon such inquisition, the effect of vesting the goods and chattels of the offender in the Crown, to be carried to England, as part of the ordinary revenues of the Crown. If such had been the intention some provision would have been made for allowing the relatives of the deceased to traverse the inquisition, if not true, or to quash it if had in law. Neither of these powers was given, nor was there any Court in existence which had power to try such traverse or to quash the inquisition. It could not be intended that the Mayor's Court should quash the inquisition of the Court of Oyer and Terminer, or try a traverse of the finding; for, independently of the fact, that the Mayor and Aldermen before whom the Mayor's Court was held were inferior to the President and Council who composed the Court of Oyer and Terminer (an appeal lying from the Mayor's Court to the President and Council), the Mayor's Court was authorized to try any civil suits, actions, and pleas between party and party. No Officer was appointed to appear for the Crown, and no case was intended to be tried before them in which they could not award execution for costs, either against the goods of the person of the Plaintiff or Defendant, as the case might be; a process which could not have been used in the case of the Crown; nor could it be intended to give jurisdiction to the Court of Oyer and Terminer to quash the inquisition taken before themselves, or to try a traverse [2-Moore NS-38] of the finding upon their own inquisition. Such a power was not one which could be exercised by a Court of Oyer and Terminer in England. We are, therefore, of opinion, that the Charter of George I. did not intend to render the goods and chattels of a *felo de se* liable to be forfeited to the Crown, even in the case of a British subject. But, even if it did so, it is wholly improbable that such a law should have been intended to apply to Mahomedans and Hindoos, even if the Crown had the power at that time to make a law binding upon them, which is disputed by Lord

Brougham. At that time there was no law in India by which property was forfeited by suicide. By the Mahomedan law suicide was not an offence, and did not cause any forfeiture of property. Even wilful homicide was justified, if committed at the request of the person killed. Nor should it be forgotten that at that time Suttee, though not enjoined by the religion of the Hindoos, had not been declared to be a crime; and that the ignorance and deluded votaries of Juggernaut were under the belief that eternal

2 Moore NS 39, 15 ER p817

happiness was obtained by self-sacrifice under the wheels of the Idol's car. It can scarcely be imagined that the Crown could have intended to introduce into a Factory in a Foreign territory the prerogative of forfeiture, and to render that prerogative applicable not only to its own subjects but to the subjects of a foreign Government over whom it had no power. Had such an intention been apparent, it would have been beyond the legal powers of the Crown to give effect to it. Having decided that the law was not introduced by the Charter of George I. The question is, has it ever been introduced at any other period? We find nothing to lead us to the [2-Moore NS-39] conclusion that it has been, nor indeed, has there been any such contention on the part of the Crown. It has not been urged, nor could it in our opinion have been urged with success, that the law was introduced by the 33rd Geo. III. c. 52, s. 157. By that section, the Governor-General in Council at Fort William, was authorized and empowered to appoint as many Coroners as he should think fit for the purpose of taking inquests upon the bodies of persons coming, or supposed to have come, to an untimely end; and such Coroners are vested with the like powers and jurisdictions as by law may be executed by Coroners in England. But there is nothing in that Act to show, that it was intended to introduce any law of forfeiture if it did not previously exist. If a law had existed by which the goods and chattels of a *felo de se* were forfeited to the Crown, the appointment of Coroners might have provided means for putting the law into force, even though it might previously have lain dormant for want of the necessary machinery. The appointment of a Coroner could not alter the law, though it might have provided a means for enforcing a law. The appointment of a Coroner could no more render a person in Calcutta liable to forfeiture of his property for *felo de se*, than it could make the act of wilful and intentional self-destruction in the Mofussil a Felony, in order that forfeiture might be the consequence and it must not be forgotten that the power of appointing Coroners was not limited to the Presidency towns, it extended to the whole of the Presidencies, and consequently if it introduced the law of forfeiture in the case of a *felo de se*, it did so not only in the Presidency towns, but also in the Mofussil, where Felony was not known as a crime, [2-Moore NS-40] and where the Mahomedan criminal law prevailed, by which, as before shown, self-destruction was not a crime. Our attention has been called to the case of *The Collector of Masulipatam v Cavalry Vencata Narainapah*; (8 Moore's Ind. App. Cases, 500). In that case it was held, that the general right of the Crown to succeed to immoveable property on failure of heirs was not excluded in the case of a Brahmin. The law of escheat was not disputed; the question raised was, whether the Crown could succeed to the property of a Brahmin on failure of heirs. In the present case the general right of the British Crown to succeed to all property, whether moveable or immoveable, upon a total failure of heirs is not disputed. That right attached immediately upon the acquisition of the sovereignty by the Crown as a necessary incident thereto, not only in those places, such as the Presidency towns, in which the laws of England had been partially introduced, but in every other part of India over which the Sovereignty had been acquired. The right of the Crown exists, as well in the case of Mahomedans and Hindoos, as in the case of British subjects. Here there is no failure of heirs, but a claim on the part of the Crown by title paramount, upon the ground that the property was vested in the Crown by forfeiture before it came to the heirs. If the property of a Mahomedan, or a Hindoo, were claimed by the Crown upon the ground of a failure of heirs, the question of failure, or no failure of heirs, would not depend upon English law, but upon the Mahomedan or Hindoo law of inheritance, as the case might be. So here the question depends upon the law applicable to the offence. If the English law was [2-Moore NS-41] introduced as to *felo de se*, and the property was liable to forfeiture upon the finding of a Coroner's inquisition, the forfeiture would, no doubt, vest in the Crown by virtue of its prerogative. All we have to show here is, that the prerogative of the Crown did not of itself make self-murder a Felony, or subject the offender to the forfeiture of his goods and chattels. If the prerogative of the Crown rendered self-murder a Felony in Calcutta, and necessarily introduced the law of forfeiture as an incident, it must have had the same effect in every part of the British dominions in India over which the right of Sovereignty was acquired. It is not a necessary incident of Sovereignty that every offence for which property is forfeited in England should be a Felony, and cause a similar forfeiture in every part of the dominions of the Crown, otherwise it must

2 Moore NS 42, 15 ER p818

follow that the right of Sovereignty introduced the law of a year and a day, and waste, in the case of attainder, in the Mofussil, and also the right to deodands. We hold that the law of forfeiture in the case

of *felo de se*, has never been introduced into Calcutta, and consequently that the estate of Rajah Kistonauth Roy was not forfeited to the Crown. This petition, therefore, must be dismissed. There will be no order as to the costs, for it is a petition presented on behalf of the Crown, and we doubt if there is any jurisdiction in this Court to order costs to be paid by the Crown."

The present appeal was from this decision.

Mr. Forsyth, Q.C. and Mr. W. H. Melvill, for the Appellant.- The question in this case is, the right of the Crown to the goods of a *felo de se*, a Hindoo inhabitant [2-Moore NS-42] of Calcutta, and a subject of Her Majesty. There is no dispute regarding the commission of the crime within the town of Calcutta, or that the inquisition and finding by a jury before the Coroner of Calcutta, appointed by Statute, 33rd Geo. III. 6 52, see. 157, was not strictly regular. By the charter of 1774, sec. 4, which established the Mayor's Court of Oyer and Terminer and Criminal Jurisdiction, the office of Coroner was first introduced into India, the Judges of that Court being appointed Coroners. In this case the finding was officially communicated by the Coroner to the Government and the Accountant-General and Master of the Supreme Court at Calcutta, who had custody of part of the assets of the deceased, as well as notice given to the Collectors of the several Zillahs in which his property was situate, of the forfeiture of the goods and chattels to Her Majesty, and that meets in anticipation any question of delay, or waiver, in making or enforcing our claim. [Lord Kingsdown: The claim arose twenty years ago. The parties might then have traversed the inquisition.]- The waiver relied on now, is merely an intimation of the Officers of the Crown here, that they did not claim on behalf of Her Majesty; leaving it, therefore, for the Government in India to make the claim, and assert its right.

Now, first, the law prescribing the forfeiture of goods and chattels of a *felo de se*, is part of the Common law of England, and under the Charter of the 13th Geo. I. the Supreme Court at Calcutta is bound to administer the Common law of England, as it was in the year 1726, unless such law has been subsequently altered by Statutes extending to India, or by Act of the Legislature of India; and our contention [2-Moore NS-43] is, that no Imperial Statute, or Legislative Act, has altered the Common law in this respect. The history of the establishment of the British rule in India is elaborately treated of by Lord Brougham, in the case of *The Mayor of Lyon v The East India Company* (1 Moore's Ind. App. Cases, 175, 272-3), and the rule as to the introduction of English law in Calcutta is furnished by the finding of the Master, and the decision of Lord Lyndhurst in the case of *Freeman v Fairlie* (lb. 309, 352), in which it was held, that a will to pass lands in Calcutta must be attested by three witnesses. The introduction of the English law, as applicable to the Natives of India, must be referred to the establishment of the Mayor's Court by the Charter of 1726, though that Court has been subsequently superseded by the establishment of the Supreme Court at Calcutta, by the Charter of 1774, when the English laws were introduced to their full extent, and with all their consequences, Auber's Analysis of the Const of the East India Comp p. 234.- [Lord Kingsdown: When was the English law binding- on the people in Calcutta?]- It existed in 1726.[Lord Kingsdown: It certainly could not be binding when Calcutta was a mere Factory for the purpose of trade. Neither could the Criminal law, in all its branches, now be applicable to Hindoo natives. Take the case of Bigamy for instance.]- The English Criminal law, we apprehend, must be taken as generally introduced in India by the Charter of 1726.- [Sir James Colville: The Mahomedan Criminal law was retained by Reg. IX. of 1793, secs. 47, 50, 74, and 75. It was only in 1832, by Reg. VI. of that year, sec. 5, that persons not professing the Mahomedan faith could claim, the exemption from being tried under [2-Moore NS-44] that law.]By the Statutes, 13th Geo. III. c. 63, sec. 14, and the 26th Geo.- III. c. 57, sec. 29, the English law was applied to Natives as well as British subjects. Statute, 9th Geo. IV. c. 74, embodied all the Criminal law of England in India. Sutte was a crime, but was tolerated, in compliance with the reservation of the 37th Geo. III. c. 142, see. 12, which respects religious usages, but Sutte was abolished by Regulation

2 Moore NS 45, 15 ER p819

XVII. of 1829. So with respect to the crime of infanticide; these were, however, exceptional cases coming within the special usages reserved to the Hindoos. Then, the material question to be considered is, whether by the Charters and Statutes, the English criminal law is not to be taken as imported into Calcutta, and in force there at the time the Rajah committed suicide. He was beyond all question a British subject, and as such was amenable to the law that had been introduced into India by the Charters and Acts of Parliament. The best exposition of the rule as to the governing law, is to be found in the dictum and decision of Lord Mansfield, in the well-known case of *Campbell v Hall* (1 Cowp. 208), where he says, "That the law and Legislative government of every dominion, equally affects all persons and all property within the limits thereof; and is the rule of decision for all questions which arise there. Whoever purchases, lives, or sues there, puts himself under the law of the place. All Englishman in Ireland, Minorca, the Isle of Mail, or the plantations, has no privileges distinct from the natives." It follows, therefore, that in no case have the Natives of a Colony or Settlement privileges distinct from the settlers, unless such rights have been specially reserved to them. Lord Stowell, in *Rudding v Smith*.

(2 Hagg. Cons. Rep. 383), quotes Lord Mansfield's proposition [2-Moore NS-45] with approbation, and says, " Huber, too, speaking upon general principles, had before promulgated the same doctrine:-" Pro subjectis imperio habendi sunt omnes, qui intra terminos ejusdem reperuntur, sive in perpetuum, sive ad tempus ibi commorantur." De Conflict. Leg lib. I. t. 3, § 2. The question of the extent of the introduction of the English law in Grenada, in the West Indies, was also considered by Sir William Grant, in *The Attorney-General v Steward* (2 Mer. 160). and to Gibraltar, by this Tribunal, in *Jephson v Riera*, (3 Knapp's PC Cases, 130). Wherever, therefore, the English law has been introduced, including of course the Criminal law, self-murder is a felonious crime. It is viewed by the English law as the highest crime, Stephens, Comms. Vol. IV. p. 108.- [Lord Kingsdown: Do you contend that the law of forfeiture was introduced by the Charter of 1726?] It may not be introduced by Charter, or Statute, in express words, but the appointment of a Coroner assumes the introduction of the English law of *felo de se*, and that there is judicial machinery for executing it. No reason appears why the law of forfeiture should not apply to Natives as well as Europeans.- [Sir Lawrence Peel: Does not your argument go too far? It would introduce the law of primogeniture and dower among Natives.]- If suicide is a crime, of course to assist a suicide is also a crime. Now, the Indian Penal Code of 1860, applies to the whole territories vested in the Crown by Statute, 21st and 22nd Vict c. 106. This Code assumes, but nowhere specifies or defines, that suicide is a crime. The 53rd section enumerates a list of punishments for offences under the Code, and expressly mentions in sec. 62, forfeiture of property, [2-Moore NS-46] for offences; and by sec. 302 it is enacted that whoever commits murder shall be punished with death, or transportation for life, and shall be liable to fine. Section 306 says, if any person commits suicide, or whoever abets the commission of such suicide, shall be punished with imprisonment for a term, and shall also be liable to fine; and section 309 provides, that whoever attempts to commit suicide shall be punished with imprisonment, for a term not exceeding one year, and shall also be liable to a fine. Now, it would be illogical to suppose that suicide is not a crime; the Code assumes that it is, and the Code applies to Hindoos and Mahomedans, as well as to Europeans.- [Lord Kingsdown: You cannot punish the individual who commits suicide. The Code only applies to those who attempt, or abet it.]

The important question of the prerogative of the Crown was not, however, considered by the Court below, and we contend that the same prerogative must attach in Calcutta as in the other British Colonies, Chalmers' Opinions, Vol. I. p. 232. Now, the right to forfeiture of goods and chattels is part of the prerogative of the Crown in this country. Stephens, Comms. Vol. II p. 495 (5th Edit.). enumerates the prerogatives, and among them mentions forfeitures for offences. So treasure trove, as by the ancient law of India, Inst. of Menu ch. VIII. secs. 37, and 38, and Royal fish, are most ancient prerogatives of the Crown. In Bacon's Abr. tit. " Forfeiture," B, it is laid down, that if a man be *felo de se* he forfeits his goods and chattels (see also *Megit v Johnson*, 2 Doug. 545); and in the note to *Toomes v Etherington* (1 Saunders, 362), it is stated to accrue on inquisition. [2-Moore NS-47]

2 Moore NS 48, 15 ER p820

[Lord Kingsdown: The Common law, as stated in that case, distinguishes the forfeiture of lands and goods. The former is only upon attainder. Now, in India there is no distinction by Hindoo law between real and personal estate.]- Lord Brougham, in *The Mayor of Lyons v The East India Company* (1 Moore's PC Cases, 283), enumerates the prerogatives the Crown is entitled to in India. That case, however, does not apply to the question here raised. The law there determined as to aliens holding lands, is by Statute, and is not part of the Common law. No doubt the prerogative attaches in cases of *felo de se* in India, whether by a British subject, or native Hindoo, if committed within the jurisdiction of the Supreme Court.

The Charter, 13th Cha. II, in 1661, upon the petition of the East India Company, granted the Governor, and East India Company, power to judge all persons living under them, and under that Charter the English law was administered in Calcutta. There was no Territorial sovereignty at that time, and, therefore, it did not extend to Natives. The Statute, 53rd Geo. III. c. 155, sec. 95, though it is the first statutable recognition of the sovereignty of the British Crown in the East Indies, was only declaratory of the existing laws for the Charter, 9th and 10th Will. III. expressly says, " The Sovereign right being always reserved over Forts, Factories, etc." Such right, therefore, existed in 1698, and the Statute, 13th Geo. III. c. 63, shows clearly that the Crown and Parliament recognized the Sovereignty of the East India Company. In *The East India Company v Syed Ally* (7 Moore's Ind. App. Cases, 555), these rights were upheld; and in the cases of *The Secretary of [2-Moore NS-48] State for India v Kamachee Boye* (7 Moore's Ind. App. Cases, 476; and see *The Rajah of Coorg v The East India Company* (29 Beav. 300), and *The Collector of Masulipatam v Cavalry Vencata Narainapah*, (8 Moore's Ind. A-pp. Cases, 500), the Government of India was held entitled to take as an escheat a Raj, for want of male heirs. It has been determined that goods of a felon convicted in India are forfeited. That point arose in Bombay, *The Advocate-General v Richmond* (Pery's Oriental Cases, 566), and the right was not questioned; the only point raised being, whether the Crown or the East India Company was entitled

to the escheat of the felon's goods; a point which does not arise here. In the matter of Govindo Lala (1 Strange's Mad. Cases, 74), goods, the property of a *felo de se*, were ordered by the Court to be delivered over to the East India Company, as grantee of the Crown; and in *Khanoo Raoot Kulvekur v Dhunbajee Kan* (2 Borr. Bom. Rep. 273), drift timber was held to belong to the Crown. No instance of forfeiture for Treason can be found.

Mr. Bovill, Q.C. and Mr. Cave, for the Respondent.- It lies on the Appellant to establish the proposition advanced by him-namely, that forfeiture of goods and chattels of a suicide is part of the law of India, applicable to Hindoos. The unanimous opinion of the Judges of the Supreme Court was, that the English law of forfeiture of the goods of a *felo de se*, did not apply to native Hindoos, unless it was specifically introduced by Statute, or Local enactment. The Appellant has failed to produce a single case in which a forfeiture of goods has been enforced by the Government in India for suicide. Govindo Lala's [2-Moore NS-49] case (1 Strange's Mad. Cases, p. 74), when examined, is no authority for such a proposition. It is simply the case of a native who died without heirs, or next of kin, and the Court directed his property to be handed over to the Registrar, for the benefit of the East India Company. Being *bona vacantia*, the Sovereign right accrued. The Bombay case, *Khanoo Raott Kulvekur v Dhunbajee Kan* (2 Borr. Bom. Rep. 273) was a case of *flotsam*, and the right of the Crown was recognized, which might be in virtue of the tenure under which Bombay is held namely, as part of the Manor of East Greenwich. These are the only two cases that can be brought to support such a claim as this. Then, there being no direct authority for the position contended for, is there any principle, or analogy of law, to support it? Our contention is, that the English law of Felony by self-murder, and consequent forfeiture of goods and chattels, has never been introduced, and cannot be applied, to Natives in any part of India. In England the ground of forfeiture is stated to be *derelict*; Bacon's *Abr. tit. "Forfeiture," B.* [Lord Kingsdown: Was the forfeiture in England *derelict*, or was it not a punishment attached to *felo de se*?]- It may be punishment. A man takes his life away, and leaves goods and chattels; Bacon there lays it down, that the

2 Moore NS 50, 15 ER p821

King takes them as the maintainer of public justice. By the feudal law of tenure, if a man deprives the Lord of a vassal, the Lord was entitled to compensation. So if the Tenant dies a natural death, the Lord could seize the best beast, or armour, according to custom, for a *Heriot*. By the Saxon Law, land did not escheat for Felony. Reeve's "*Hist of the English Lam,*" Vol. I. p. 10. So as to right of dower, *Co. Lit.* 41a; [2-Moore NS-50] *Spelmen, "On Tenures,"* p. 53; and Yorke's "*Law of Forfeiture for High Treason,*" pp. 54, 56. It is doubtful whether forfeiture for *felo de se* existed in England before the introduction of the feudal system it appears it did for murder. In *Stiernhöök, "De Jure Sueonum et Gothorum,"* lib. II. ch. 6, and lib. III. ch. 3, forfeiture is spoken of for high Treason, but not for *felo de se*. He quotes the laws of Alfred, ch. IV. where it is thus laid down: "*Si quis vitae Regis insidiatur per se, vel per ultores merede conductos vel servos suos, vita privetur, et omnibus quae possidet.*" Then it goes on, "*Si quis vitae Domini sui insidiatur hoc ipso vitam suam amittat, et omnia quae possidet vel pro ratione aestimationis capitis Domini sui culpa eximatur.*" And the law of Canute, ch. LIV. is similar:- "*Si quis Regi vel Domino insidiatur fuerit, vitam suam perdat, et omne quod habet nisi ad triflex ordalium pergat.*" Forfeiture is purely a part of the feudal policy which has never been introduced into India, nor is capable of being applied to Hindoo Natives under the British rule. The law, and customs of the Hindoos have always been respected and preserved to them. This was the provision of the Statute, 21st Geo. III. c. 70, sec. 17, and the assurance given to the Natives by Sir Elijah Impey, the first Chief Justice, when the Charter of 1774 was brought into force. "*Memoirs of Sir Elijah Impey, Ed. by his son,*" Appx. 427 [8 vo. Lond. 1846].

There can be no doubt as a general proposition, that Englishmen settling in an uninhabited country carry with them, as their birthright so much of the law of England as is applicable to, and requisite for, the state of the settlement, which will include, of course, so much of the Common law as is applicable to [2-Moore NS-51] their condition, as well as the Statute law, *Chalmers' Opinions*, Vol. I. p. 195. But the case of the original Settlements in the East Indies is quite different, as is shown in the history given in *The Mayor of Lyons v The East India Company*. The first settlers were only traders permitted by the Government of the Nabob of Bengal to reside and have Factories within his dominions. It was not until many years afterwards that they acquired as a Company, first Territorial and then Sovereign rights by Charters and Treaties. It was long after the establishment of the Company as a trading body, that they acquired anything like Sovereign rights. In the first instance, such of the Company's servants within the Factories as chose to adopt the English laws were permitted by the Crown to do so. Indeed, all the authorities show, that the English law was never generally, but only partially, introduced in India. Thus it has been held by the Supreme Court at Calcutta that the laws against Popery did not extend to India, *D'Conto v Da Costa* (*Morton's Dec. Cal.* 356); and that the Statute making carnal knowledge of a female under the age of ten years, a Felony, did not extend to

India, *Rex v Chundichurn Bose* (Morton's Dec. Cal. 357); and by this Tribunal that the Mortmain law was not in force in India, *The Mayor of Lyons v The East India Company* (1 Moore's PC Cases, 176; and see on this point, *Mitford v Reynolds*, 1 Phill. pp. 185, 192; *Whicker v Hume*, 7 H.L. Cases, 124; *Attorney-Gen v Steward* 2 Mer. 143; *Clark's Col. Law*, p. 7. It will only be necessary to trace the introduction of the English law into Calcutta, to show that this branch of the Criminal law was not in force in Calcutta at the time of the [2-Moore NS-52] commission of this suicide. The third Charter of April 3rd, 1661, gave power to the Governor and Council, where the East-India Company had Factories, or places of trade within the East Indies, to judge all persons belonging to the Company, or under their control, in all cases, Civil or Criminal, according to the laws of England. The Charter of 1726, provided for the administration of justice in Civil and Criminal cases within the Factory of Fort William, by creating the Mayor's Court, and for the punishment of persons accused of any crime, to be as near to the laws of England as the condition and circumstances of the place and inhabitants would admit of. The Charter of 1753, substantially repealed these two Charters, and gave to the East India Company, besides further jurisdiction, fines and amercements made by the Court. Then came the Statute, 13th Geo. III. c. 63, sec. 13, and the Charter of 1774, which established the Supreme

2 Moore NS 53, 15 ER p822

Court at Calcutta, as a Court of Oyer and Terminer, within the Town of Calcutta and the Factory of Fort William, with jurisdiction over Murder, and other felonies and misdemeanors, had, done, or committed within the Town and Factories. The "Statute, 21st Geo. III. c. 70, sec. 17, gave the Supreme Court jurisdiction to entertain suits and actions of the native inhabitants of Calcutta, providing that the inheritance and succession to lands, etc. and contracts should be determined in the case of Mahomedans, by the Mahomedan law, and of Hindoos by the Hindoo law. And section 18 of that Statute expressly enacted, that the civil and religious usages of the Natives were to be respected, and acts done, according to the rule and [2-Moore NS-53] law of caste, were not to be adjudged as crimes, although the same may not be justifiable by the law of England. Section 19 also provided, that the process of the Supreme Court was to be accommodated to the religion and usages of the Natives. At this period Suttee, as well as infanticide, prevailed in India, and were, therefore, sanctioned by the law and recognized by the Government as part of the religious usages of the Natives. Then came the 33rd Geo. III. c. 52, sec. 157, which, for the first time, appointed Coroners for the Presidencies in India, empowering them to hold inquests in the same manner as Coroners in England. It is this Act that the other side now insist gives the right to the East India Company to seize the goods and chattels of a *felo de se*. But besides that they have failed to prove that the appointment of such officers as Coroners would give the Crown a prerogative not previously enjoyed, it is impossible to argue that such a forfeiture would accrue for an offence held not only not blameable by the Hindoo inhabitants of India, but in the case of widows, absolutely praiseworthy, and in accordance with the religion of the country. *Felo de se* was, in fact, at this time, no offence at all. The Statute, 9th Geo. IV. c. 74, after reciting that many wholesome alterations have been made in the Criminal law of England, and the administration thereof, and that it was expedient that some of the said alterations should be extended to the British Territories in the East Indies, enacts, by section 18, that when any person shall be arraigned upon an indictment or inquisition for Treason, or Felony, the jury empanelled to try such persons shall not be charged to inquire concerning the lands, tenements, or goods, nor [2-Moore NS-54] whether he fled for such Treason or Felony. But under this Statute, however, there must be a trial for Felony, not an inquisition, or inquiry, as before a Coroner. It is true that, by the 16th and 17th Vict c. 95, sec. 27, all fines and penalties incurred by the sentence or order of any Court of justice within the Territories under the Government of the East India Company, and all forfeitures for crimes, of any real and personal estate within those Territories, and all property devolving as *bona vacantia*, for want of a rightful owner, shall belong to the East India Company, in trust for Her Majesty, for the service of the Government of India; and that by the 21st and 22nd Vict c. 106, the Territories in the East Indies are absolutely vested in the Crown. None of these Statutes, however, introduced the English law of forfeiture of the goods and chattels of a *felo de se*, which is nowhere designated as a Felony in India, and is not even mentioned until the Penal Code of 1860, which first designated such a crime in India. Sec. 306 of the Code enacts, that if any person commits suicide, whoever abets the commission of such suicide shall be punished with imprisonment for a term not to exceed ten years, and shall also be liable to fine; and section 309 enacts, that whoever attempts to commit suicide shall be punished with simple imprisonment for a term of one year, and shall also be liable to fine; thus making the aiding and abetting a *felo de se* a misdemeanour; whereas such aiding or abetting by the Criminal law of England is a Felony, the party being a principal in the first degree. How then can it be argued that with such a provision as this, there could have been previously anything like the English law of forfeiture prevailing [2-Moore NS-55] in India? By the Common law of England, to assist another to commit suicide is Murder. This is conclusive, that even at the time the Code was passed, forfeiture for *felo de se* was not

considered part of the English law introduced into India; still less could it have been the law in the year 1774, the date which the Appellant's Counsel insist that this branch of the Criminal law of England was introduced into Calcutta; at a time too when we have shown it was not considered an offence there even if committed.

Supposing, however, the law of forfeiture of goods of *felo de se*, to have been introduced in India, and applicable to Europeans, it does not apply to Hindoos and

2 Moore NS 56, 15 ER p823

other Natives, by whom, in many cases, self-destruction is considered not merely legal, but even meritorious. Thus, *The Vakeel of Government v Sohawun* (1 Niz. Adaw. Rep. 220) was the case of a Hindoo of the Rajpoot tribe, who had prepared a pit and set fire to the fuel in it, to enable his father, who was ill with the leprosy, to burn himself, and the prisoner was held justified under the tenets of the Hindoo religion, and acquitted under the provisions of the Mahomedan law; and the case of *Sheeoo Suhaee and Chotoo* (ib. 292) is to the same effect. Suicide from leprosy, or *Suttee*, though both are within the letter of sec. 3, Ben. Reg. VIII. of 1799, yet have not been considered by the Nizamut Adawlut within the purview of that section (see note to *Sohawun's Case*, 1 Niz. Adaw. Rep. 221); which Regulation, as there stated, was intended to preserve the lives of many from the effects of passion or revenge, aided by the enormous prejudice of superstition. The Institutes of Menu treat of punishments for certain offences, but nowhere mention [2-Moore NS-56] forfeiture for suicide. A Hindoo committing suicide does not alter the rule of succession, *Strange's "Hindu Law,"* vol. 1. p. 157.

Another important point, is the question of the deceased's domicile. His domicile was Berhampore, about one hundred miles from Calcutta, and though he commits suicide at Calcutta, that fact will not give the Supreme Court jurisdiction over his personal property. [Sir Lawrence Peel: He had a residence at Calcutta, which would make him subject to civil process (see *Baboo Janokey Doss v Bindabun Doss*, 3 Moore's Ind. App. Cases, 175).]

Lastly, regard being had to the proceedings of the Indian Government, and to the absence of any claim on the part of the Crown, and the ultimate waiver of its rights, if any, it would be inequitable to enforce the law of forfeiture, if it exists in India, which we deny, against the estate of *Rajah Kistonauth Roy*. If the Crown had insisted upon its prerogative, under the Statute, 3rd and 4th Will. IV. c. 85, the inquisition might have been traversed, which could have been done with effect, *Toomes v Etherington* (1 Saunders, 363a), 1 Hale, PC 417, first, as being against evidence, and, secondly, on the ground of the misdirection of the Coroner. The Government have stood by for twenty years without asserting its claim.

The consideration of the case was adjourned, and their Lordships' judgment was now delivered by

The Right Hon. Lord Kingsdown (July 22, 1863).- The question in this case arises on the claim of the Crown to a portion of the personal estate of [2-Moore NS-57] *Rajah Kistonauth Roy*, who destroyed himself in Calcutta on the 31st of October, 1844, and was found by inquisition to have been *felo de se*.

We understand that the *Rajah* had a residence in Calcutta though his *Raj*, or *Zemindary*, was at some distance from that city. He was a Hindoo both by birth and religion.

On the morning of the day on which he destroyed himself he made a Will, by which he left a large portion of his property to the East India Company for charitable purposes.

The Will was disputed by his widow, who was his heiress, and a suit was instituted by her against the East India Company and others, to determine its validity. It was agreed between the litigating parties that the question should be tried by an issue at law. The widow insisted, amongst other objections, that the Testator was not in a fit state of mind to make a Will at the time of its execution.

The issue was tried, and a verdict was found by the Judges against the Will, upon what ground does not distinctly appear, and the verdict was acquiesced in by the Indian Government.

If the Crown, by virtue of the inquisition, was entitled to all the personal property of the *Rajah*, the validity or invalidity of the Will was, as regards his personal estate, of no importance.

Now, the inquisition had found that the goods and chattels of the *Rajah* when he committed self-murder amounted within Calcutta to Rs. 9,87,063, and without the town of Calcutta to Rs. 2,89,500; and it stated that all this property was claimed by the widow.

No claim to any part of it appears at that time to, [2-Moore NS-58] have been set up by the East India Company on behalf of the Crown, and very large sums were from time to

2 Moore NS 59, 15 ER p824

time, by the order, or with the consent of the Indian Government, paid over to the widow in the years 1846 and 1847.

A portion, however, of the Rajah's personal estate, amounting to between six and seven lacs of Rupees, was secured in the Supreme Court, in order to provide for the payment of life annuities to two ladies, both then living. The existence of these charges seems to have been the only reason why this fund was not transferred to the widow with the rest of the estate.

One of the annuitants is now dead, and the fund reserved to answer her annuity is of course set free. This fund is now claimed by the Indian Government under the finding on the inquisition of 1844.

It is stated in the affidavit of a gentleman who was Manager for the widow on the death of her husband, that he was advised in 1844, by three English Counsel of eminence, whom he names, that the verdict on the inquisition might be set aside on the ground both of misdirection by the Coroner, and as being against the weight of evidence, but that proceedings were not taken for that purpose, because the Government represented, through its law agents, that no claim would ever be made under the verdict.

If the facts be such as we have stated, it is impossible not to feel some surprise at the present demand; and, if we differed from the Court below, it would deserve much consideration, whether a claim which seems to have been abandoned in 1844, ought now to be entertained. But these facts do not seem to have been noticed by the Judges in India; there may [2-Moore NS-59] possibly be circumstances with which we are unacquainted to account for the course taken by the Government, and we think it better to dispose of the case on the merits.

At what time then, and in what manner, did the forfeiture attached by the law of England to the personal property of persons committing suicide in that country, become extended to a Hindoo committing the same act in Calcutta?

The sum of the Appellant's argument was this:- that the English Criminal law was applicable to Natives as well as Europeans within Calcutta, at the time when the death of the Rajah took place, and the sovereignty of the English Crown was at that time established; that the English settlers when they first went out to the East Indies in the reign of Queen Elizabeth took with them the whole law of England, both Civil and Criminal, unless so far as it was inapplicable to them in their new condition; that the law of *felo de se* was a part of the Criminal law of England which was not inapplicable to them in their new condition, and that it, therefore, became part of the law of the country.

Where Englishmen establish themselves in an uninhabited or barbarous country, they carry with them not only the laws, but the sovereignty of their own State; and those who live amongst them and become members of their community become also partakers of, and subject to the same laws.

But this was not the nature of the first settlement made in India it was a settlement made by a few foreigners for the purpose of trade in a very populous and highly civilized country, under the government of a powerful Mahomedan ruler, with whose sovereignty [2-Moore NS-60] the English Crown never attempted nor pretended to interfere for some centuries afterwards.

If the settlement had been made in a Christian country of Europe, the settlers would have become subject to the laws of the country in which they settled. It is true that in India they retained their own laws for their own government within the Factories, which they were permitted by the ruling powers of India to establish; but this was not on the ground of general international law, or because the Crown of England or the laws of England had any proper authority in India, but upon the principles explained by Lord Stowell in a very celebrated and beautiful passage of his judgment in the case of "The Indian Chief" (3 Rob. Adm. Rep. 28).

The laws and usages of Eastern countries where Christianity does not prevail are so at variance with all the principles, feelings, and habits of European Christians that they have usually been allowed by the indulgence or weakness of the Potentates of those countries to retain the use of their own laws, and their Factories have for many purposes been treated as part of the territory of the Sovereign from whose dominions they come. But the permission to use their own laws by European settlers does not extend those laws to Natives within the same limits, who remain to

2 Moore NS 61, 15 ER p825

all intents and purposes subjects of their own Sovereign, and to whom European laws and usages are as little suited as the laws of the Mahometans and Hindoos are suited to Europeans. These principles are too clear to require any authority to support them, but they are recognized in the judgment to which we have above referred.

[2-Moore NS-61] But, if the English laws were not applicable to Hindoos on the first settlement of the country, how could the subsequent acquisition of the rights of sovereignty by the English Crown make any alteration? It might enable the Crown by express enactment to alter the laws of the country, but until so altered the laws remained unchanged. The question, therefore, and the sole question in this case is, whether by express enactment the English law of *felo de se*, including the forfeiture attached to it, had been extended in the year 1844 to Hindoos destroying themselves in Calcutta.

We were referred by Mr. Melvill in his very able argument, to the Charter of Charles II. in 1661, as the first, and indeed the only one which in express terms introduces English law into the East Indies. It gave authority to the Company to appoint Governors of the several places where they had or should have Factories, and it authorized such Governors and their Council to judge all persons, belonging to the said Company, or that should live under them, in all causes, whether Civil or Criminal, according to the laws of the Kingdom of England, and to execute judgment accordingly'

The English Crown, however, at this time clearly had no jurisdiction over native subjects of the Mogul, and the Charter was admitted by Mr. Melvill (as we understood him) to apply only to the European servants of the Company; at all events it could have no application to the question now under consideration. The English law, Civil and Criminal, has been usually considered to have been made applicable to Natives, within the limits of Calcutta, in the year 1726, by the Charter, 13th Geo. 1. Neither that nor the [2-Moore NS-62] subsequent Charters expressly declare that the English law shall be so applied, but it seen is to have been held to be the necessary consequence of the provisions contained in them.

But none of these Charters contained any forms applicable to the punishment, by forfeiture or otherwise, of the crime of self-murder, and with respect to other offences to which the Charters did extend, the application of the criminal law of England to Natives not Christians, to Mahomedans, and Hindoos, has been treated as subject to qualifications without which the execution of the law would have been attended with intolerable injustice and cruelty.

To apply the law which punishes the marrying a second wife whilst the first is living, to a people amongst whom polygamy is a recognized institution, would have been monstrous, and accordingly it has not been so applied.

In like manner, the law, which in England most justly punishes as a heinous offence, the carnal knowledge of a female under ten years of age, cannot with any propriety be applied to a country where puberty commences at a much earlier age, and where females are not infrequently married at the age of ten years.

Accordingly, in the case referred to in the argument, the law was held not to apply.

Is the law of forfeiture for suicide one which can be considered properly applicable to Hindoos and Mahomedans?

The grounds on which suicide is treated in England as an offence against the law, and punished by forfeiture of the offender's goods and chattels to the King, are stated more fully in the case of *Hales v Petit*, in *Plowden's Reports*, p. 261, than in any other book [2-Moore NS-63] which we have met with. It is there stated, that it is an offence against nature, against God, and against the King. Against nature, because against the instinct of self-preservation'; against God, because against the commandment, "Thou shalt not kill," and a *felo de se* kills his own soul; against the King, in that thereby he loses a subject.

Can these considerations extend to native Indians, not Christians, not recognizing the authority of the Decalogue, and owing at the time when this law is supposed to have been introduced no allegiance to the King of Great Britain?

The nature of the punishment also is very little applicable to such persons. A part of it is, that the body of the offender should be deprived of the rites of Christian

2 Moore NS 64, 15 ER p826

burial in consecrated ground. The forfeiture extends to chattels real and personal, but not to real estates; these distinctions, at least in the sense in which they are understood in England, not being known or intelligible to Hindoos and Mahomedans.

Self-destruction, though treated by the law of England as Murder, and spoken of in the case to which we have referred in *Plowden* as the worst of all Murders, is really, as it affects society, and in a moral and religious point of view, of a character very different not only from all other Murders, but from all other Felonies. These distinctions are pointed out with great force and clearness in the notes attached to the Indian Code, as originally prepared by Lord Macaulay and the other Commissioners. The truth is, that the act is one which in countries not influenced by the doctrines of Christianity has been regarded as deriving its moral character altogether [2-Moore NS-64] from the circumstances in which it is committed:- sometimes as blameable, sometimes as justifiable, sometimes as meritorious, or even an act of positive duty.

In this light suicide seems to have been viewed by the founders of the Hindoo Code, who condemn it in ordinary cases as forbidden by their religion; but in others as in the well-known instances of *Suttee* and self-immolation under the car of *Juggernaut*, treat it as an act of great religious merit.

We think, therefore, the law under consideration inapplicable to Hindoos, and if it had been introduced by the Charters in question with respect to Europeans, we should think that Hindoos would have been excepted from its operation. But that it was not so introduced appears to us to be shown by

the admirable judgment of Sir Barnes Peacock in this case; and if it were, not so introduced, then as regards Natives, it never had any existence.

It would not necessarily follow that, therefore, it never had existed as regards Europeans. That question would depend upon this, whether, when the original settlers, under the protection of their own Sovereign, were governed by their own laws, those laws included the one now under consideration; whether an offence of this description was an offence against the King's peace, for which he was entitled to claim forfeiture; whether the Factory could for this purpose be considered as within his jurisdiction. In that case it might be that the subsequent appointment of Coroners by the Act of the 33rd Geo. III. would render effectual a right previously existing, but for the recovery of which no, adequate remedy had been previously provided.

[2-Moore NS-65] We are not quite sure whether the Court below intended to determine this point or not. Much of the reasoning in the judgment is applicable to Europeans as well as to Natives, but the Chief Justice in his judgment says:- "At present we have merely to consider the question, so far as it relates to the goods and chattels of a Native who wilfully and intentionally destroys himself, and who cannot in strictness be called a *felo de se*; and we now proceed to deal with that question, and with that question alone " (ante [2 Moo. PC (N.S.)], p. 35).

The point so decided we think perfectly clear, and it is not necessary to go further. Since the New Code, which confines the penalty of forfeiture within much narrower limits than existed previously to its enactment, and does not extend it to the property of persons committing suicide, the case can, hardly again arise.

We have no doubt that it is our duty in this case, humbly to advise Her Majesty to dismiss the appeal, with costs.

[Mews' Dig tit. COLONY, I. GENERAL PRINCIPLES; 1. English Law, Introduction and applicability; tit. FELO DE. SE; tit. INDIA, 4; tit. INTERNATIONAL LAW, III. SC 9 Moo. Ind. App. 387; 9 Jur (N.S.) 877; LT 843; 2 N.R. 530,; 12 W.R. 21. As to applicability of English law, see note to Lyons (Mayor of) v East India Co., 1836, 1 Moo. PC 299.]